

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3255 of 1981

with

SPECIAL CIVIL APPLICATION No 305 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PRAMODKUMAR I. PATHAK & OTHERS

Versus

STATE OF GUJARAT & OTHERS

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Appearance: In Both the Special Civil Applications

MR PV HATHI for the Petitioners

MR NIGAM SHUKLA for Respondents No. 1 and 2

MR MANOJ N POPAT for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/96

ORAL JUDGEMENT

1. As somewhat similar questions regarding the seniority and other conditions of service have arisen in

these two Special Civil Applications, hence the same are being disposed of by this common judgment.

SPECIAL CIVIL APPLICATION NO.3255 OF 1981

2. The petitioners, in all ten, were appointed in the year 1971-72 on the post of computers subject to their selection by the Gujarat Panchayat Service Selection Committee (hereinafter referred to as the Committee). The petitioners later on were duly selected by this Committee. All the petitioners were given training provided for the computer. Their appointment orders on the post of computer did not contained any term regarding passing of Pre-service training, as is provided for Junior clerks. The pay scale of the computer at the relevant time was Rs.250-400, the scale equivalent to the pay scale of Jr. clerks. There is no dispute amongst the counsel for the parties that the pay scales of the computer and junior clerk are equal.

3. The petitioners are constrained to file this writ petition under Article 226 of the Constitution of India as stated by them in para no.2 as the respondents no.2 and 3 are compelling them to take Pre-service training for a period of two months on a mere stipend of Rs.150/per month at Ahmedabad though the statutory recruitment rules or any other Rule or Rules do not provide for any such Pre-service training for them who are in service since last more than eight to nine years. The petitioners have further stated that in exercise of the power conferred by sec. 323 of the Gujarat Panchayat Act, 1961 (hereinafter referred to as the Act, 1961) the Government of Gujarat made the rules called the Gujarat Panchayat Service (Classification & Recruitment) Rules, 1967 (hereinafter referred to as the Rules, 1967) and the same are amended from time to time. As per schedule IV of the Rules, 1967 the post of computer in public health branch is to be filled in direct recruitment. The provisions for recruitment on the post of clerk is at item no.2 of Schedule IV in General Branch and the said rules specifically provides that the candidates recruited by direct selection as well as by promotion will have to undergo such course as Pre-service and post service training as may be prescribed from time to time.

4. The first respondent herein has issued a resolution dated 9th July, 1975 with regard to promotion to be given from two common cadres and the said resolution was challenged in this Court and vide its judgment dated 20th June, 1975 the said resolution was declared as ultra vires of Rule 7 of the Rules, 1967.

Pursuant to the said dictum the first respondent amended the rules of recruitment in 1977 by its resolution dated 13th May, 1977 and by the said amendment new Rule 2(a) was inserted by which common clerical and accounts cadres were constituted. Further a new schedule, schedule IV A was inserted providing recruitment Rules for the common clerical and accounts cadre. Part - I of the said Schedule IV A contained the recruitment rules of the clerical cadre viz. (i) Office Superintendent/Head Clerk-cum-Accountant, (ii) Aval karkun, Senior clerk, Store-keepers, Clerks, Gujarati typist, English typists, Computers and Assistant Store keepers. It has been provided in the amended rules that the appointment to the post of computer shall be made by transfer of suitable clerks from Clerical Group III. The computers cadre which has been included in clerical group III were made eligible for promotion to the post of senior clerk under the Rules, 1967 after making the amendment therein in the year 1977. So the persons in Clerical Gr. III, clerks, English typist, Gujarati typist, computers and Assistant store keepers are eligible for promotion to the post of Sr. clerk according to seniority cum merit subject to the further other eligibilities. The petitioners-computers, though they were included in the Clerical Gr. III by amendment rules, 1967, but their cases for promotion was not considered on the ground that they have not undergone Pre-service training. Their cases for promotion will be considered only after they have undergone the Pre-service training. This condition has given rise to the filing of this Special Civil Application by the petitioners.

5. The learned counsel for the petitioners Shri P.V. Hathi made the contention that the action of the respondent to ask the petitioners, computers who were duly selected by the Committee to undergo Pre-service training is wholly arbitrary and unjustified. The petitioners have been appointed as computers earlier to the amendment made in the Rules, 1967. Shri Hathi further contended that the Rules, 1967, nowhere provides even earlier to the amendment and after the amendment, to undergo Pre-service training by the computers.

6. On the other hand, learned counsel for the respondent Shri Pandya contended that the petitioners in case they desires of the promotion to the post of senior clerk they have to undergo Pre-service training.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Earlier to the amendment made in the Rules, 1967, the

appointments to the post of computers are to be made 100% by direct recruitment. The eligibility provided for the appointment to the post of computer by direct recruitment are as under:

6-A : Computers :

Appointment shall be made by direct recruitment from amongst candidates who \_\_

(a) are not more than 25 years of age; and

(b) have passed the S.S.C. Examination with mathematics or an equivalent examination recognised by Government;

Provided that preference may be given to the candidates who possess practical experience of mensuration and calculation.

Provided further that the age limit can be relaxed upto 35 years in case qualified persons within the prescribed age limits are not available.

In this provision nowhere it is provided that the computers have to undergo Pre-service training. The learned counsel for the respondent is unable to bring to the notice of the court any provision under the amended rules which require for the computer, direct recruitee, to undergo Pre-service training. A reference may have to the unamended provisions of the Rules, 1967 where under the provision has been made for the recruitment to the post of clerks. The appointment to the post of clerk under the unamended rules were provided to be made by (i) direct selection through the selection committee on the result of the competitive examination held by the Board or (ii) by transfer of a suitable person from amongst the persons holding the post of Talati-cum-Village Panchayat Secretary or (iii) by promotion of a person of proved merit and efficiency from amongst the members of the Inferior Panchayat Service. The eligibility for appointment by promotion to the post of clerk from a member of Inferior Panchayat Service shall be, (a) have rendered about four years service in a post included in the Inferior Panchayat Service, (b) have passed the Secondary School Certificate examination or an examination recognised by the Government as equivalent to it and (c) have undergone the Pre-service training for the post of clerk and passed the post training examination. Only in case where the promotion is to be

made to the post of clerk from the post of Inferior Panchayat Service, those class of persons have to undergo Pre-service training and to pass the post training examination. The explanation has also been inserted which provides that the persons belonging to the Inferior Panchayat Service shall after being selected for the post of clerk, be sent for Pre-service training and shall be given an appointment to the post of clerk only after he has successfully completed the training and passed the examination taken after such training. So for direct recruitment on the post of clerk or appointment on the post of clerk by transfer of the suitable persons of category of Talati cum Village Panchayat Secretary no such eligibility was there. The cadre of computer has been amalgamated and merged after the amendment made in the Rules, 1967 vide notification dated 13th May, 1977 in the Clerical group. Rule 2(2)(C-1) which has been inserted by the amendment defines the clerical group which means group of clerical posts in the Panchayat Service specified in Part I of Schedule IV A. Schedule IV A as inserted to the Rules, 1967 by the amendment provides for Common Clerical Cadres. In Clerical Group I, the post of Office Superintendent, Head clerk, Head clerk-cum-Accountant and Aval karkun has been included. In Clerical Group II, the post of Senior clerks and store keepers are included. In Clerical Group III the post of Clerks, Gujarati Typist, English Typist, Computer, and Assistant Store Keepers were included. Against the post of computers, it has been mentioned that the appointment shall be made by transfer of suitable clerks from Clerical Group III, and the same is applicable for the post of Assistant Store Keepers. The eligibility for promotion to the post of Senior clerk under the amended rules has been provided. The appointment to the post of Sr. clerk shall be made by promotion from amongst the persons who are holding posts shown in Clerical Group III according to seniority-cum-merit and who have passed the qualifying examination as may be prescribed by Government. The proviso has been inserted which provides that in case of typists, appointment shall be made from amongst person who have worked for about two years as clerk and have successfully undergone the Pre-service training or post service training during such period. From the reading of the amended rules, it is clear that the promotion to the post of senior clerk is to be made now from the posts falling in Clerical Group III i.e the posts of clerk, Gujarati Typist, English Typist, Computer and Assistant Store Keepers. The proviso which has been inserted to clerical Group II, Part I of Schedule IV A clinches the issue. Only in case of typists, the eligibility has been provided for promotion, amongst

persons who have worked for about two years as a clerk and have successfully undergone the pre-service training or post service training during such period. So reading of this provision gives out that for promotion of the computers to the post of Senior clerk, they are not required to successfully undergo the Pre-service training or post service training.

8. The action of the respondents not to consider the case of petitioners for promotion unless they undergo Pre-service training is absolutely without any authority of law. The counsel for the respondents is unable to point out even any resolution or circular of the Government or the Panchayat wherein such a condition is provided for promotion of the Computers to the post of Senior clerks.

9. The net result of the aforesaid discussion is that the action of the respondents to ask the petitioners to undergo Pre-service training is without any authority of law.

SPECIAL CIVIL APPLICATION NO.305 OF 1987.

10. This Special Civil Application has been filed by the petitioners therein and have prayed for issuance of writ of mandamus or any appropriate direction to declare, annexure 'E' the order dated 21st August, 1986 of the Dy. Development Officer to be illegal and further prayer has been made that the respondents may be directed to finalise the provisional common seniority list of Clerical cadre Group III dated 20th June, 1985.

11. In the Special Civil Application No.3255 of 1981, the petitioners therein have also prayed for directions to the respondent to prepare a combined provisional seniority list of all working in Clerical Group III.

12. In both the cases the petitioners have come up with a case that when the post of computer has been amalgamated and merged in common Clerical Cadre and the promotion has been provided to the post of Senior clerk from the clerk, typists, computer and Assistant Store keepers then a combined seniority list has to be prepared. In fact, the combined seniority list has been prepared, but subsequently, the names of computers have been deleted there from. It has been done under a misconception of law. Rules, 1967 have been amended and the post of computer has been brought in Common Clerical Cadre. The appointment to the post of computer now has been provided on transfer of suitable clerks from

Clerical Group III. In Clerical Group III, the posts are of clerk, typist, computer and Assistant Store Keepers. In view of the rule as stood after amendment, a common combined list of Clerical cadre Group III and not only of the clerks and typist, but name of the computers should not have been excluded, and if it is permitted then they will be deprived of the right of promotion to the post of Senior clerk.

13. The learned counsel for the petitioner further contended that the seniority in the Clerical Group III should be given to the petitioners from the date of initial appointment on the post of computers and not from the date on which they were taken in clerical cadre. The counsel for the petitioner further contended that this question is no more res integra. It has been decided by the division bench of this court in the bunch of Special Civil Applications no.3666 & 4169/83 and 5737 & 6006/85 on 20th July, 1993. It has been held by this court in the aforesaid case that a combined seniority list of Clerical Group III has to be prepared as the post of computer has been brought on the clerical cadre. The learned counsel for the respondent fairly conceded that the aforesaid issue is squarely covered by the decision of this Court in the case referred above. I have considered the submissions made by learned counsel for the parties. I have gone through the decision of this court in the aforesaid cases and I am satisfied that the matter is squarely covered.

14. In the result, this Special Civil Application No.305 of 1987 is allowed and the annexure 'E' dated 21st August, 1986 is quashed and set aside.

15. The prayer made in Special Civil Application No.3255 of 1981 regarding preparation of combined seniority of Clerical Group III and assignment of seniority to the Computers therein from the date of their regular appointment also stands accepted.

16. The respondents are directed to prepare combined seniority list of Clerical Group III in accordance with the Rules, 1967 as amended in the year 1977. The computers shall be given the seniority in the clerical cadre by taking into consideration the date of appointment on the post of computer and not from the date on which they have been taken in the clerical cadre after amendment of the Rules, 1967. The respondents are further directed to prepare a list within a period of four months and thereafter consider the case of the petitioners for incidental and ancillary benefits for

which they may be entitled. Rule is made absolute in the  
aforesaid terms.

Rule made absolute in both these Special Civil  
Applications. No Order as to costs.

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